
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

MICHAEL D. MARLIN,

Plaintiff,

versus

SAM DAVEE, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:07-CV-131

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Michael D. Marlin, an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this lawsuit against Sam Davee, Francisco J. Quintana, John B. Fox, and David Miller.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the defendants' motion to dismiss or, alternatively, motion for summary judgment be granted, and that plaintiff's complaint be dismissed without prejudice for failing to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes Plaintiff's objections are without merit. Plaintiff has failed to produce evidence precluding summary judgment. Unsworn affidavits not made "under the penalty of perjury" are not competent summary judgment evidence. *Nissho-Iwai American Corp. v. Kline*, 845 F.2d 1300, 1306 (5th Cir. 1988). Accordingly, the defendants' motion to dismiss or, alternatively, motion for summary judgment should be granted.

O R D E R

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. It is therefore

ORDERED that the defendants' motion to dismiss or, alternatively, motion for summary judgment is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Sherman, Texas, this 8th day of September, 2009.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE